

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY J. BROWN,

Plaintiff,

v.

MELISSA THORNE, et al.

Defendants.

ORDER

Case No. 17-cv-73-wmc

On April 15, 2019, this court entered an order directing plaintiff Larry Brown to submit a trust fund account statement to determine if plaintiff's financial situation has changed in response to his motion to waive his \$0.91 initial partial filing fee assessed in this case.

The recent account statement that plaintiff submitted shows that he regularly receives a monthly average of \$8.20 of deposits to his trust fund account. Accordingly, plaintiff's motion to waive the initial partial filing fee will be denied. Because plaintiff may be able to make the initial partial payment from a more recent deposit made to his account, I am willing to provide him an extension of time. Plaintiff may have until May 3, 2019, in which to pay the \$0.91 initial partial filing fee. If plaintiff does not have enough money to make the initial partial payment from plaintiff's regular account, plaintiff should arrange with prison authorities to pay the remainder from plaintiff's release account.

I note, that in *Newlin v. Helman*, 123 F.3d 435 (7th Cir. 1997), the court of appeals held that initial partial payments are to "come off the top" of all deposits to a prisoner's account. That means that the \$0.91 initial partial fee is to be given priority over debts and obligation plaintiff might owe. Plaintiff should show a copy of this order to prison officials to ensure that they are aware they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that:

1. Plaintiff Larry Brown's request for the court to waive the initial partial payment in this case, dkt. 23, is DENIED without prejudice.
2. Plaintiff may have until May 3, 2019, in which to submit a check or money order payable to the clerk of court in the amount of \$0.91.
3. If, by May 3, 2019, plaintiff fails to make the initial partial payment, or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff's filing his case at a later date.

Entered this 23rd day of April, 2019.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge